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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/604,553

07/30/2003

Hiroki Nakano

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32074

7590

09/20/2005

INTERNATIONAL BUSINESS MACHINES CORPORATION
DEPT. 18G
BLDG. 300-482
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EXAMINER

CALEY, MICHAEL H

ART UNIT

PAPER NUMBER

2871

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/604,553

Applicant(s)

NAKANO ET AL.

Examiner

Michael H. Caley

Art Unit

2871

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 13-18.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


ROBERT KIM
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because:
Arguments are not persuasive to overcome the rejections of claims 13-18 as anticipated by or as unpatentable over Chaudhari.

Regarding claim 13, Applicant argues that Chaudhari fails to disclose a mask that is "deformed in a plane perpendicular to the substrate". Although the examiner does recognize differences in the shape of the mask disclosed by Applicant and the mask disclosed by Chaudhari in Figures 3A and 4A, the proposed claim language fails to identify such a characteristic present in the invention that is not disclosed by Chaudhari.

To identify a reasonably broad interpretation of the term "deformed", Merriam Webster's Collegiate Dictionary, Tenth Edition provides the definition "distorted or unshapely in form; misshapen". A plane perpendicular to the substrate may be identified as the plane of the cross section view of Figures 3A and 4A of Chaudhari extending from the left side of the figure to the right side of the figure and from the top of the figure to the bottom of the figure. Within this plane, the gaps in the mask due to the edges and openings of the mask are interpreted as deformations.

Regarding claims 14, 15, 17, and 18, the examiner maintains that an "external force" for deforming the mask defines a product-by-process limitation such that the claim is only limited to the structure implied by the steps (MPEP 2113). In contrast to the characterization of statements from the Office Action made in Applicant's Remarks (Page 4), the claim is interpreted to limit the mask structure to being deformable by an external force to create the deformations. Given that the mask defined by Chaudhari does not occur by itself in nature, it is inherent that the mask deformations be deformable by an external force. Similarly, the examiner maintains the mask as dynamically deformable.